

**IN THE DISTRICT COURT OF  
LANCASTER COUNTY, NEBRASKA**

**CITY OF LINCOLN, NEBRASKA,  
a municipal corporation,**

**Plaintiff,**

**vs.**

**INDIAN CENTER, LLC,  
an Nebraska non-profit  
corporation; and KEVIN  
ABOUREZK; and  
RENEE SANS SOUCI; and  
ERIN POOR; and  
KATHLEEN DANKER,**

**Defendants.**

Case No. CI \_\_\_\_\_

**COMPLAINT**

COMES NOW, the City of Lincoln, Nebraska, a municipal corporation, and for its Complaint against Defendants Indian Center, Inc.; Kevin Abourezk; Renee Sans Souci; Erin Poor; and Kathleen Danker (collectively hereinafter “Defendants”), states and alleges as follows:

**PARTIES**

1. The City of Lincoln, Nebraska (hereinafter “City”), is a duly incorporated city of the primary class under the laws of the State of Nebraska.

2. The City of Lincoln Board of Zoning Appeals (hereinafter “BZA”) is an administrative board of the City created by Article IX-B, Section 13 of the Lincoln City Charter and further governed by Lincoln Municipal Code Chapter 27.75.

3. Indian Center, Inc. is an Nebraska Non-profit Corporation with its principal place of business at 1100 Military Road, Lincoln, Nebraska 68508 and is one of five individuals or entities who have filed a “Notice of Appeal & Request for Stay of Development” with the BZA.

4. Kevin Abourezk is one of five individuals or entities who have filed “Notice of Appeal & Request for Stay of Development” with the BZA.

5. Renee Sans Souci is one of five individuals or entities who have filed “Notice of Appeal & Request for Stay of Development” with the BZA.

6. Erin Poor is one of five individuals or entities who have filed “Notice of Appeal & Request for Stay of Development” the BZA.

7. Kathleen Danker is the owner of real property located at 4700 S. 1<sup>st</sup> Street, Lincoln, Lancaster County, Nebraska is one of five individuals or entities who have filed “Notice of Appeal & Request for Stay of Development” with the BZA.

### **JURISDICTION & VENUE**

8. City incorporates the allegations of paragraphs 1 through 7 above as if set forth fully here.

9. This Court has jurisdiction according to Neb. Rev. Stat. § 25-21,149.

10. Venue is proper in Lancaster County, Nebraska, according to Neb. Rev. Stat. § 25-403.01(1) and (2) because Defendant Indian Center, Inc., is a Nebraska non-profit corporation that has a principal address in Lancaster County, Nebraska and the cause of action arose in Lancaster County.

11. Defendants are subject to the jurisdiction of this Court according to Neb. Rev. Stat. § 25-536.

## FACTS

12. City incorporates the allegations of paragraphs 1 through 11 above as if set forth fully here.

13. On or about April 25, 2022, the City Council of the City of Lincoln, Nebraska adopted Resolution Nos. A-93302 and A-93303, which are attached hereto as Attachments A and B respectively.

14. On or about April 25, 2022, the City Council of the City of Lincoln, Nebraska approved Ordinance Nos. 21262 and 21263, which are attached hereto as Attachments C and D respectively.

15. On or about May 4, 2022, Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska (“Mayor”), acting in said capacity signed Resolution No. A-93302 and Ordinance Nos. 21262 and 21263.

16. On or about May 5, 2022, Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, acting in said capacity signed Resolution No. A-93303.

17. Resolution No. A-93302 approves amendments to the 2050 Lincoln-Lancaster County Comprehensive Plan (hereafter “Comprehensive Plan”). Specifically, those amendments alter the Land Use Map and Growth Tiers Map included in the Comprehensive Plan specifically as it relates to property located generally in the area of the intersection of West Pioneers Boulevard and U. S. Highway 77.

18. Resolution No. A-93303 approves an “Annexation and Change of Zone Agreement for Wilderness Crossing”.

19. Ordinance No. 21262 approves the annexation into the corporate limits of the City of Lincoln, Nebraska of a parcel of land located adjacent to S. 1<sup>st</sup> Street between Pioneers Boulevard and Old Cheney Road as depicted in the map on Attachment E.

20. Ordinance No. 21263 approves a change in the “Lincoln Zoning Districts Map” by altering the designation of approximately 76.46 acres located generally along the west side of S. 1<sup>st</sup> Street and south of Pioneers Boulevard from AG Agriculture District to R-3 Residential District Planned Unit Development.

21. On or about August 2, 2022, Defendants filed “Notice of Appeal & Request for Stay of Development with the BZA (hereafter “BZA Appeal”) asserting that the Mayor’s approvals were procedurally defective and that the legislative actions are “...substantively invalid due to their failure to comply with Lincoln-Lancaster County 2050 Comprehensive Plan”. Said Appeal is attached hereto as Attachment F.

22. Defendants’ BZA Appeal requests that the BZA issue an order “...finding the Mayor’s approvals were untimely, and therefore, have rendered the actions of the City Council unapproved or vetoed and otherwise, in effective...”

23. Defendant Kathleen Danker has filed an appeal in the District Court for Lancaster County, Nebraska pursuant to Neb. Rev. Stat. §15-1201 asking the District Court to reverse Plaintiff’s approval of Resolution A-93302 and Ordinance Nos. 21262 and 21263 and remand said matter to the City Council. Said action can be found at CI22-2204, and it is scheduled for hearing on Friday, September 30, 2022 at 2:00 p.m. on the City’s Motion to Dismiss. Combining this matter with the Danker matter described herein would avoid a waste of judicial resources and inconsistent rulings.

## COUNT I – DECLARATORY JUDGMENT

24. City incorporates the allegations of paragraphs 1 through 21 above as if set forth fully here.

25. The jurisdiction of the BZA, as it relates to the BZA Appeal filed by Defendants, is limited to appeals of “where it is alleged there is an error in any order, decision, or determination made by an administrative official in the enforcement of this title.” Lincoln Municipal Code §27.75.020 a.

26. The Mayor’s actions in signing the legislation are part of the legislative process for enacting municipal laws pursuant to Article IV, Section 13 of the Lincoln City Charter and do not constitute an “...order, decision, or determination made by an administrative official in the enforcement of this title...” as that phrase is stated in Lincoln Municipal Code §27.75.020.

27. No other administrative actions are alleged to have been made in error in the BZA Appeal.

28. The effect of Defendants’ requests of the BZA is to overturn or modify the legislative actions of the City Council, as approved by the Mayor, which is beyond the authority of the BZA as codified in the Lincoln City Charter and Chapter 27.75 of the Lincoln Municipal Code.

29. City seeks a declaration that the BZA is without subject matter jurisdiction to consider the BZA Appeal filed by Defendants.

30. Plaintiffs’ erroneous assertion that the BZA has jurisdiction to consider their “Appeal” presents a live justiciable controversy which is ripe for judicial determination.

WHEREFORE, City requests a Declaratory Judgment that City of Lincoln Board of Zoning Appeals is limited in its jurisdiction as it applies to the BZA Appeal filed by Defendants and that the BZA is

without subject matter jurisdiction to hear or rule upon the issues raised in the Defendants' BZA Application.

## **COUNT II – INJUNCTIVE RELIEF**

31. Plaintiff incorporates the allegations of paragraphs 1 through 27 above as if set forth fully here.

32. Plaintiff is a home rule charter city wherein the legislative and executive functions of government are separated and held by the City Council and the Mayor respectively.

33. Article IV, Section 8 of the Lincoln City Charter, which governs the Plaintiff, vests “all legislative powers of the city” in the City Council.

34. The City Council's legislative authority, as described in the Lincoln City Charter, is limited by the authority of the Mayor to veto legislation as authorized by Article IV, Section 13 of the Lincoln City Charter.

35. The BZA, to which Defendants have applied for relief, is a non-elected board of individuals appointed by the Mayor and confirmed by the City Council according to Lincoln City Charter Article IX-B, Section 10.

36. The effect of the relief requested from by the BZA by Defendants is to overturn and reverse the legislative actions of the City Council that were approved by the Mayor acting in her limited legislative role.

37. Defendants' request for relief from the BZA is contrary to the separation of powers principles included in the Lincoln City Charter and, if granted, would result in a fundamental alteration of the system of checks and balances described in the Charter.

38. Defendants' request for relief from the BZA seeks to grant super-legislative authority in the hands of an unelected, administrative board, which is directly contrary to law and would result in irreparable harm to the City's form of government that could have long lasting and unintended consequences far into the future.

39. Should Defendants' Appeal be considered and granted by the BZA, and it is later adjudicated that the BZA lacked subject matter jurisdiction to have entered such a ruling, irreparable harm will occur in the interim to the City. That harm includes the uncertainty with respect to delivery of municipal services, including emergency and law enforcement response by City Fire, Rescue, and Police services. Further, improper and illegal reversal of the annexation by the BZA as requested by Defendants would also have serious and irreparable consequences related to the imposition and collection of real property and sales taxes.

40. Injunctive relief, in the form of an order of the Court enjoining the BZA from acting on Defendants' Appeal until final adjudication of Plaintiff's request for declaratory judgment in Count I is necessary as Plaintiff has no adequate damages at law and conducting a hearing and subsequent findings by the BZA will cause unnecessary and irreparable harm to the Plaintiff.

41. The plain reading of the Lincoln City Charter and Municipal Code make it likely that the Plaintiff's request for declaratory judgment will succeed on the merits.

WHEREFORE, the Plaintiff requests the Court enter an order staying any further proceedings before the City's Board of Zoning Appeals on the Defendants' BZA Application until such time as the Court has issued a final order on Plaintiff's request for declaratory judgment in Count I above.

DATED this 22<sup>nd</sup> day of September, 2022.

**CITY OF LINCOLN, Plaintiff.**

YOHANCE L. CHRISTIE, #24271  
CITY ATTORNEY

By: /s/ Timothy S. Sieh

TIMOTHY S. SIEH, #22971  
CITY OF LINCOLN LAW DEPARTMENT  
ASSISTANT CITY ATTORNEY  
555 South 10th Street, Suite 300  
Lincoln, NE 68508  
Phone: 402-441-7281  
[tsieh@lincoln.ne.gov](mailto:tsieh@lincoln.ne.gov)

By: /s/ Abigail F. Littrell

ABIGAIL F. LITRELL, #24423  
CITY OF LINCOLN LAW DEPARTMENT  
ASSISTANT CITY ATTORNEY  
555 South 10th Street, Suite 300  
Lincoln, NE 68508  
Phone: 402-441-7263  
[alittrell@lincoln.ne.gov](mailto:alittrell@lincoln.ne.gov)